

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Petition for Rulemaking to Amend Rule)	RM No. 11355
Section 22.901(b) to Extend Analog Sunset)	
Date)	
)	
Sunset of the Requirement that Cellular)	WT Docket No. 01-108
Systems Maintain Analog Transmission)	
Capacity through February 18, 2008)	

REPLY TO OPPOSITION

ALLTEL Corporation, Dobson Communications Corporation, and Verizon Wireless (“Licensees”) hereby reply to the Opposition¹ to their Motion to Dismiss (“Motion”)² filed by the Alarm Industry Communications Committee (“AICC”) in the captioned proceeding.³ The Motion urged dismissal of a Petition for Rulemaking (“Petition”) filed by AICC in an attempt to extend the analog sunset date. The Motion demonstrated that the Petition does not warrant consideration because it misconstrues the scope of the analog compatibility standard, is inconsistent with indistinguishable Commission precedent, and cannot serve to give AICC the relief it seeks. Thus, Licensees urged dismissal pursuant to Section 1.401(e) of the Commission’s rules which states:⁴

Petitions which are moot, premature, repetitive, frivolous, or which plainly do not warrant consideration by the Commission may be denied or dismissed without prejudice to the petitioner.⁵

¹ Opposition of AICC, RM No. 11355 (filed Jan. 31, 2007).

² Motion to Dismiss of ALLTEL Corporation, Dobson Communications Corporation, and Verizon Wireless, RM No. 11355 (filed Jan. 19, 2007).

³ See *Wireless Telecommunications Bureau Seeks Comment on Petition for Rulemaking to Extend Cellular Analog Sunset Date*, RM No. 11355, *Public Notice*, DA 06-2559 (rel. Dec. 20, 2006) (“*Public Notice*”).

⁴ 47 C.F.R. § 1.401(e).

⁵ *Id.*; see *Reallocation of 30 MHz of 700 MHz Spectrum (747-762/777-792 MHz) from Commercial Use*, RM No. 11348, *Order*, DA 06-2278 (PSHSB rel. Nov. 3, 2006); Letter from

The key underpinning of the Motion was a prior Commission determination — a determination made in the specific context of the analog sunset — that fixed devices are “not mobile devices by definition, and thus service to such equipment is not covered by the analog requirement.”⁶ Thus, an extension of the analog compatibility requirement to provide AICC’s members additional time to replace *fixed* devices *would* be contrary to the analog rule itself and directly inconsistent with applicable Commission precedent.

Rather than address this Commission determination, AICC merely ignores it. Instead, AICC claims that fixed devices are covered by the analog compatibility requirement simply because (i) a different provision authorizes cellular carriers to provide fixed service, and (ii) the Wireless Telecommunications Bureau issued a public notice seeking information on the number of alarm systems served by the national cellular carriers.⁷ These arguments are unavailing.

Quite remarkably, the discussion of the critical legal question — whether fixed devices are covered by the analog compatibility requirement — is limited to little more than a single page.⁸ AICC instead urges the Commission to reject the Motion on procedural grounds.⁹ AICC claims the motion (and potentially all comments in the docket) was defective and should be dismissed because the pleadings did not contain proof of service and were not served on AICC pursuant to Section 1.405(a).¹⁰ The *Public Notice* set forth specific procedures for responding to the Petition that differed from those specified by Section 1.405 and did not require service on

John B. Muleta, Chief, Wireless Telecommunications Bureau, FCC, to Michael W. Grady, Vice President, Technology, Engineering and Quality and Sector Chief Technical Officer, Northrop Grumman Information Technology, DA 03-2940 (Sept. 24, 2003).

⁶ *Year 2000 Biennial Regulatory Review*, WT Docket No. 01-108, *Report and Order*, 17 F.C.C.R. 18401, 18416 n.82 (2002) (“*Analog Sunset Order*”); Motion at 2 (quoting same).

⁷ See Opposition at 6.

⁸ *Id.* at 6-7.

⁹ *Id.* at 1, 5-6.

¹⁰ See Opposition at 5-6.

AICC.¹¹ Licensees filed their pleadings — a motion to dismiss and comments — pursuant to the procedures set forth in the Public Notice. Nevertheless, to the extent the service requirement contained in Section 1.405 applied, the Commission has indicated that electronically filed pleadings that “are received after the deadlines, or that fail to meet the necessary formalities, will be treated as informal or *ex parte* filings.”¹² Thus, the pleadings must be included in the record and should not be rejected.¹³

Finally, to the extent Section 1.405(a) required service of pleadings on AICC despite the procedures set forth in the *Public Notice*, Licensees request a waiver of the requirement.¹⁴ The purpose of the service obligation contained in Section 1.405(a) is to ensure that petitioners such as AICC have an opportunity to respond to pleadings commenting on or challenging their

¹¹ See *Public Notice* at 3-4 (setting forth filing requirements). In other contexts, similar public notices have required parties to comply with Section 1.405. See *National Association Of Broadcasters And Association Of Local Television Stations Seek Modification Or Clarification Of Broadcast Carriage Rules For Satellite Carriers*, CS Docket No. 00-96, *Public Notice*, DA 02-0031 (Jan. 9, 2002). Here, the *Public Notice* contained no such provision and, in fact, established a reply comment filing deadline that exceeded the time set forth under Section 1.405. Cf. *Public Notice* at 1 (establishing a 16 day period for filing replies) with 47 C.F.R. §1.405(b) (stating that replies may be filed “no later than 15 days” after the comment deadline).

¹² *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, *Report and Order*, 13 F.C.C.R. 11322, 11326 (1998) (citation omitted).

¹³ Even if the Motion was dismissed, the Commission is authorized to dismiss petitions for rulemaking that are frivolous and the Petition seeks to extend the analog sunset date in order to extend service to devices that were never covered by the analog requirement. To the extent AICC argues that the Motion is unauthorized and should not be considered, the argument is moot. The Motion also was attached to Licensees’ comments and incorporated therein. Thus, the arguments remain before the Commission even if the Motion were dismissed. Moreover, the rule specifically authorizes parties to file a “statement in support of or in opposition to a petition for rule making.” See 47 C.F.R. § 1.405(a). The rule does not specify any particular labeling for these statements and, clearly a motion to dismiss constitutes a statement in opposition.

¹⁴ See 47 C.F.R. §1.3 (noting that the Commission’s rules can be waived on its own motion or for good cause); §1.925 (finding that a waiver of the Commission’s rules is appropriate where the petitioner demonstrates that (1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and (2) that a grant of the requested waiver would be in the public interest). A waiver is appropriate under either standard.

proposals.¹⁵ The purpose of the rule has been served. AICC had actual notice of the Motion; the Opposition acknowledges that a copy was downloaded from the Commission's Electronic Comment Filing System. In fact, AICC has already responded to the Motion. Thus, a waiver of the Section 1.405(a) service requirement is appropriate.¹⁶

For the reasons set forth above, as well as those set forth in Licensees' Motion to Dismiss, the Petition should be dismissed pursuant to Section 1.401(e).

Respectfully submitted,

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February 6, 2007

¹⁵ See *Amendment of parts 2 and 97 of the Commission's Rules to Create a Low Frequency Allocation for the Amateur Radio Service*, ET Docket No. 02-98, *Notice of Proposed Rulemaking*, 17 F.C.C.R. 8954, 8960 n.39 (2002) ("We believe that it is in the public interest to have as complete a record as possible in this proceeding. We further note that while [the Petitioner] was not properly served, their [Motion to Strike] included a substantive response these comments.... Therefore we deny [the Petitioner's] Motion to Strike.").

¹⁶ *Id.*

CERTIFICATE OF SERVICE

I, Paula Lewis, do hereby certify that a copy of the foregoing "Reply to Opposition" was served this 6th day of February 2006, via first class U.S. Mail, on the following:

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